



# THE INTERIM

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## IN THIS ISSUE

VOLUNTEERS WANTED FOR "ELECTRONIC DOCUMENTS FOR LEGISLATORS" PILOT PROJECT .....	1
EASIER ONLINE ACCESS TO INTERIM COMMITTEES ..	1
LEGISLATIVE COUNCIL .....	2
ENVIRONMENTAL QUALITY COUNCIL .....	2
ENERGY AND TELECOMMUNICATIONS COMMITTEE ..	3
LEGISLATIVE AUDIT COMMITTEE .....	4
WATER POLICY COMMITTEE .....	4
LEGISLATIVE FINANCE COMMITTEE .....	4
CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE .....	7
EDUCATION AND LOCAL GOVERNMENT COMMITTEE ..	7
FIRE SUPPRESSION COMMITTEE .....	8
STATE-TRIBAL RELATIONS COMMITTEE .....	8
LAW AND JUSTICE COMMITTEE .....	9
REVENUE AND TRANSPORTATION COMMITTEE .....	11
THE BACK PAGE .....	13
FLORIDA, MICHIGAN MAIL BALLOT SOUNDS FAMILIAR THEME .....	13
INTERIM CALENDAR .....	16

## THE INTERIM

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**THE INTERIM** is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

## VOLUNTEERS WANTED FOR "ELECTRONIC DOCUMENTS FOR LEGISLATORS" PILOT PROJECT

Tired of all that paper?...In response to interest expressed by legislators last session of moving to a "paperless" Legislature, the Office of Legislative Information Technology has initiated a pilot project to reduce the amount of paper legislators receive during the session. Legislators who volunteer for the pilot project will receive certain 2009 session-related documents electronically. These documents include the initial review of bill draft letter and bill draft (including any subsequent letters and bill drafts or redos), the preintroduction letter, all committee hearing notices (the white slips), and the phone and web messages received by the Legislative Information Office (the yellow and blue messages delivered by the pages). If the pilot project goes well, all legislators could receive these documents electronically during the 2011 session.

To participate in the pilot project, a legislator must be willing to receive all of the relevant documents electronically and must have a regularly maintained email account. Legislators who want to volunteer should contact Steve Eller at [seller@mt.gov](mailto:seller@mt.gov) or (406) 444-3590.

The information technology group is also expanding the information contained on each legislator's webpage. The webpage will contain not only the legislator's committee assignments and associated bills, but also a hearings calendar for each legislator's scheduled bills. Legislators and members of the public will be able to access those pages through the legislative branch website.

## EASIER ONLINE ACCESS TO INTERIM COMMITTEES

People interested in monitoring the activities of legislative interim committees can now do so more easily online in a couple of different ways.

First, an A-Z index has been added to the homepage of the legislative branch website. A link to the index is in the very top, right-hand corner of the homepage at [www.leg.mt.gov](http://www.leg.mt.gov). The index includes alphabetized links to all committee pages, as well as to a host of other information available on the site.

Second, the legislative branch has created shorter and more intuitive and memorable web addresses (URLs) for all interim committees. You can go straight to committee homepages using these addresses:

- Children, Families, Health, and Human Services Interim Committee: [www.leg.mt.gov/cfhhs](http://www.leg.mt.gov/cfhhs)
- Economic Affairs Interim Committee: [www.leg.mt.gov/eaic](http://www.leg.mt.gov/eaic)
- Education and Local Government Interim Committee: [www.leg.mt.gov/elgic](http://www.leg.mt.gov/elgic)
- Energy and Telecommunications Interim Committee: [www.leg.mt.gov/etic](http://www.leg.mt.gov/etic)

- Environmental Quality Council: [www.leg.mt.gov/eqc](http://www.leg.mt.gov/eqc)
- Fire Suppression Committee: [www.leg.mt.gov/fire](http://www.leg.mt.gov/fire)
- Law & Justice Interim Committee: [www.leg.mt.gov/ljic](http://www.leg.mt.gov/ljic)
- Revenue & Transportation Interim Committee: [www.leg.mt.gov/rtic](http://www.leg.mt.gov/rtic)
- State Administration & Veterans' Affairs Interim Committee: [www.leg.mt.gov/sava](http://www.leg.mt.gov/sava)
- State-Tribal Relations Interim Committee: [www.leg.mt.gov/tribal](http://www.leg.mt.gov/tribal)
- Water Policy Committee: [www.leg.mt.gov/water](http://www.leg.mt.gov/water)
- Choice (RCII-13 )
- Afforestation/Reforestation Programs-Restocking (AFW-8)
- State Climate Public Education and Outreach (CC-4)
- Procurement of Efficient Fleet Vehicles (TLU-9)
- Industrial Energy Audits and Implementation (RCII-10)
- Support of Renewable Energy Applications (RCII-8)
- Expanded use of Biomass Feedstocks for energy use (AFW-7)
- Incentives for Enhancing GHG Benefits/Farm Bill Conservation (AFW-4)
- Target for Reducing the State's Own GHG Emissions (CC-7.1)
- Low Income and Rental Housing Energy Efficiency Program (RCII-1)
- Consumer Education Programs (RCII-6)

## LEGISLATIVE COUNCIL

The Legislative Council meets April 1. Agenda items include: a review of the fiscal note study from last interim, annual and even-year sessions, interim committee topics, and budget initiatives for the 2009 session.

For more information about the council, visit the Legislative Council's webpage or contact Susan Byorth Fox at [sfox@mt.gov](mailto:sfox@mt.gov) or (406) 444-3066.

## ENVIRONMENTAL QUALITY COUNCIL

Climate change survey results presented to council...In the coming months, the Environmental Quality Council will take a closer look at 15 recommendations included in the "Montana Climate Change Action Plan," which is aimed at reducing greenhouse gas emissions in Montana.

During a meeting March 10-11 in Helena staff provided EQC members with the results of a climate change survey conducted during the month of February. In an effort to solicit public comment and better understand how Montanans feel about climate change, the EQC invited citizens to weigh in on the 54 recommendations included in the "Montana Climate Change Action Plan: Final Report of the Governor's Climate Change Advisory Committee." The final report was released in November 2007.

Based on the results of the survey, the EQC voted to further examine 15 recommendations including:

- Enhanced Solid Waste Recovery and Recycling (AFW-12)
- Programs to Promote Local Food and Fiber (AFW-11)
- Transportation System Management (TLU-10)
- Market Transformation and Technology Development Programs (RCII-2)
- Metering Technologies/Load Management and

At a May meeting, the EQC will examine conservation considerations related to the recommendations, current efforts already underway related to the recommendations, and legislation that could be considered to implement the recommendations.

Ask and you shall receive...The online survey was available between Feb. 4 and Feb. 29. The survey garnered 1,986 responses. Of the total, 962 people signed their survey. Of the 16 EQC members, 13 members submitted surveys.

Along with the rankings, participants were invited to comment on the individual recommendations. More than 600 pages of public comment were submitted. All comments are now available on the EQC webpage. An overview of the surveys, as well as a synopsis of which recommendations ranked high with the public and EQC members, is also available electronically.

Because the survey was not scientific and did not have a controlled sample, it can't be viewed as an accurate gauge of public opinion on climate change or on individual recommendations. Results of the survey, however, were compiled in an effort to look for trends in support or lack of support for particular recommendations.

The survey says...The top 10 recommendations listed above were among the public and the EQC member's top 20, based on the survey results. For example, "Programs to Promote Local Food and Fiber" received a rank of 4 or 5 by 75% of participating EQC members and 59% of the public participating in the survey. In looking at those that received the least support, there also were trends between the EQC and the public responses. A "Carbon Tax" received a rank of 1 or 2 by 46% of the participating EQC members and 46% of the public.

EQC member Sen. Bob Hawks compiled a list of the recommendations with a combined (5 and 4) ranking score for both the EQC and public members totaling over 50%. He distributed the list to the full EQC, and it was used by EQC members in selecting the 15 recommendations that will be further studied.

Conservation easements...The Land Board currently has several legal options when it comes to state trust land and conservation easements, according to a legal opinion by EQC attorney Todd Everts, who drafted the opinion as part of the HJR 57 study. The study directs the EQC to examine options for establishing conservation easements on trust lands.

Among other things, Everts concluded the board has the authority to:

- sell an estate or interest in state trust lands. This interest could include--and has been included in some of the board's past transactions--the sale of development rights. This authority includes the ability to sell or retain an estate or interest in perpetuity.
- retain an estate or interest in state trust lands. This interest could include--and has been included in some of the board's past transactions--the retention of development rights.
- grant an easement for "conservation purposes" (undefined in statute) pursuant to 77-2-101(1)(e), MCA. The board also has the authority to grant an easement for "other public uses" under 77-2-101(1)(f).
- grant easements on state trust lands for natural areas under the Montana Natural Areas Act of 1974.
- accept gifts or donations of land or other property and is obligated to manage the land for the benefit of the specific purposes designated by the person gifting the property. This could include conservation restrictions on the property.
- lease trust lands for up to 99 years under 77-1-204, MCA, for uses that could include--and has been included in some of the board's past transactions--conservation uses.

The EQC also reviewed a proposed brochure that explains the basics of conservation easements. The committee directed staff to draft proposed findings for the study and a preliminary report for the next meeting.

May meeting scheduled...The EQC meets May 12-13 in Room 102. For more information, contact Todd Everts, teverts@mt.gov or (406) 444-3747, Joe Kolman, jkolman@mt.gov or (406) 444-9280, or Sonja Nowakowski, snowakowski@mt.gov, (406) 444-3078. Meeting agendas and other materials are posted on the EQC webpage.

## ENERGY AND TELECOMMUNICATIONS COMMITTEE

Committee considers carbon sequestration...The

Energy and Telecommunications Interim Committee meets again May 1-2 in Helena, where members are expected to flesh out findings and recommendations or potential legislation on carbon sequestration.

The ETIC last met Jan. 24 in Helena and requested information on how other states are dealing with carbon sequestration regulation. The Wyoming Legislature recently approved two bills, HB 89 and HB 90, on the regulation of carbon sequestration and ownership of the pore space where carbon is injected. Washington recently adopted a lengthy set of rules (Chapter 173-407 Washington Administrative Code) for greenhouse gas emissions performance standards and sequestration plans and programs. Based on existing model regulations and legislation, there are seven topics that should be considered in a regulatory framework:

- jurisdiction;
- agency oversight;
- permitting requirements
- liability;
- pore space ownership;
- eminent domain; and
- funding, bonding, fee structure.

Based on the question of jurisdiction, states, including Montana, are in a unique position. The recently enacted federal energy law, HR 6, "Energy Independence and Security Act of 2007", appears to grant the Environmental Protection Agency explicit authority over the injection and sequestration of carbon dioxide, but the federal legislation does not specify whether states or the federal government have the authority to oversee the long-term storage of CO<sub>2</sub>. The EPA has authority under the Safe Drinking Water Act, which governs the Underground Injection Control (UIC) program, to regulate CO<sub>2</sub>.

Under the UIC program, there are five well classifications. States can apply for primary responsibility over all classes of wells, only oil and gas wells (Class II), or all wells except oil and gas (Classes I, III, IV and V). If a state does not apply for and obtain primacy, the EPA implements the program. In Montana, the EPA retains primacy over all well classifications, with the exception of Class II, which the Montana Board of Oil and Gas oversees.

In March 2007, the EPA recommended that all carbon sequestration pilot projects be permitted under Class V experimental technology wells. In October 2007, the EPA announced its plans to develop regulations for long-term carbon sequestration. It is unknown at this time whether the EPA will create a new class of UIC wells for carbon sequestration projects, or develop guidelines under one of the existing well classifications. It also is unknown if the EPA will allow states to petition for oversight of UIC wells used for carbon sequestration. States like Wyoming and Washington already have primacy over the five existing well classifications, unlike Montana.

Next meeting in May...The ETIC meets May 1-2 in Room 172. Information on the ETIC and its studies can be found on the committee's webpage. For more information

contact Sonja Nowakowski at [snowakowski@mt.gov](mailto:snowakowski@mt.gov) or (406) 444-3078.

## LEGISLATIVE AUDIT COMMITTEE

Legislative auditor search subcommittee appointed...With the pending retirement of Scott Seacat as legislative auditor, Sen. Joe Balyeat, chair of the Legislative Audit Committee, appointed himself along with Reps. Bill Beck and Hal Jacobson and Sen. Lynda Moss to a search subcommittee for hiring a new legislative auditor.

The search subcommittee met on March 24 to consider the following:

- legislative auditor position description;
- legislative branch pay plan and position classification;
- legal requirements for the legislative auditor position;
- legal authority and related responsibility of the Legislative Audit Committee; and
- scope of search and time line for the search and interview process

Next committee meeting may be in June...The next Legislative Audit Committee meeting has not been scheduled, but the committee may meet in June.

## WATER POLICY COMMITTEE

Legislation on water regulation and development may be considered...The Water Policy Interim Committee continues to wrestle with laws on water regulation and development, as well as cracking down on illegal use of the valuable resource.

At its March meeting, the committee decided to keep working on possible legislation that would resolve these policy concerns.

A working group will meet in April and discuss combining two proposed measures. One would clarify that local governments may require community water and public sewer systems based upon specific criteria such as population density, soil conditions, or public health or environmental concerns. The other would require subdivision applications to include proof that a permit to appropriate water has been applied for. The measure would also require that final plat approval may not be granted until the permit to appropriate water has been obtained. Neither of these provisions relates to exempt wells.

The group also will examine ways to streamline the process for groundwater permits in closed basins.

Many speakers at the March meeting touted the need for more enforcement. The WPIC decided not to

pursue a measure that would have created a water rights enforcement division managed by a state engineer overseeing water commissioners. However, the committee is still considering other enforcement options.

Committee to meet in Helena at the end of April...The next meeting is scheduled for April 29-30 at the state Capitol. An agenda, more meeting information, and background materials will be available on the committee's webpage.

For more information, contact Joe Kolman, (406) 444-9280 or [jkolman@mt.gov](mailto:jkolman@mt.gov).

## LEGISLATIVE FINANCE COMMITTEE

LFC meets in March...The Legislative Finance Committee met March 6 and 7. The meeting agenda and reports are available on the Legislative Fiscal Division website. For more information contact Clayton Schenck at [cschenck@mt.gov](mailto:cschenck@mt.gov) or (406) 444-2986. The following summarizes the policy and fiscal reports presented by LFD staff and discussed by the committee.

Information Technology Update...Staff reported on the 2008 update to the statewide strategic plan for information technology. Staff said that the 2008 update is a reprint of the 2006 plan; as such, the plan implied no new fiscal or policy impacts. For more information, contact Greg DeWitt at [gdwitt@mt.gov](mailto:gdwitt@mt.gov) or 406-444-5392.

Acquiring Office Space for State Agencies...Staff reported on how the Department of Administration allocates office space for state agencies in Helena and staff asked the committee whether it wants to consider legislative options. A major concern is that the department typically enters into long-term leases without conducting comparative analysis of the least-cost alternative for office space. The committee directed staff to work with and not duplicate efforts of other legislative divisions to identify options for the committee to consider. For more information on this topic contact Greg DeWitt at [gdwitt@mt.gov](mailto:gdwitt@mt.gov) or (406) 444-5392.

General Fund Update: FY 2008 Revenue Collections...Based on data through the end of February 2008, total general fund revenue collections for fiscal year 2008 may exceed HJR 2 revenue estimates. Although the outlook for most revenue sources has not changed much since the May special session, the overall trend for general fund revenue for FY 2008 is strong. Most of the major revenue sources are on target or are exceeding the estimates contained in revenue estimating resolution, with the exception of corporation income taxes. Since individual income taxes are the major source of general fund revenue, any shortfall in corporation income taxes and other minor sources (nursing facility fees, insurance taxes, highway patrol fines, coal trust interest earnings) should be easily offset by excess individual income tax collections.

Staff discussed with the committee what this information means for fiscal year 2009 and beyond. Current trends portray an optimistic outlook for this fiscal year, but a thorough analysis of the underlying economic conditions is imperative. The housing downturn, high energy and other commodity prices, and eroding consumer sentiment are some of the factors that will affect future revenue collections. Without this analysis, erroneous conclusions could easily be drawn that could lead to inappropriate fiscal policy during the next legislative session.

Changing economic conditions could result in a “boom and bust” cycle similar to the “dot.com” bubble that was followed by a precipitous fall in the equity markets and a reduction in state revenues during the 2003 biennium.

While LFD staff will continue to monitor revenue trends, a thorough analysis of current revenue trends with an eye toward the future will be done during the spring and summer in preparation for the revenue estimate process of the Revenue and Transportation Interim Committee (RTIC). This analysis will be the basis of LFD's revenue estimate recommendations to RTIC for the 2011 biennium. For more information, contact Terry Johnson at [tjohnson@mt.gov](mailto:tjohnson@mt.gov) or (406) 444-2952.

Real I.D Act of 2005: March Deadline for Applications for Extension... Staff reported that the Department of Homeland Security has recently published final rules for the REAL ID Act. The rules allow states to request an initial extension for compliance with the provisions of the act, which becomes effective May 11, 2008. The extension request must be filed by the attorney general on or before March 31, 2008. If Montana does not request an extension, it will be out of compliance with the act and as a result state issued driver's licenses and identification cards will not be accepted for use for federal purposes such as boarding a federally regulated aircraft or entry into a federal building. Legislation passed during the 2007 session prohibits the Department Justice, including the Motor Vehicle Division, from complying with the REAL ID Act; it is unclear whether filing for an extension is allowed under Montana statute. The attorney general is expected to make a decision on whether to file before the March deadline. For more information, contact Pat Gervais at [pagervais@mt.gov](mailto:pagervais@mt.gov) or (406) 444-1795.

Department of Revenue: \$14 Million Block Funding... Dan Bucks, director of the Department of Revenue, reported on activities related to the additional funding provided by the 2007 Legislature, including the expansion of electronic filing applications for Montana taxpayers, completion of the current reappraisal cycle by Jan. 1, 2009, and improving existing tax compliance programs to ensure that resident, nonresident, and corporate taxpayers are meeting their filing obligations and paying their fair share of taxes. The department's handouts are on the LFD website under the reports for the March 2008 LFC meeting.

DPHHS: State Hospital... Staff provided an update

on the Montana State Hospital (MSH). The report noted:

- The year to date MSH population of 209 people remains above the licensed capacity of 189
- The executive adopted Goal 189 to reduce the MSH population to the licensed capacity of 189
- DPHHS legal staff determined that:
  - An exigency situation exists at MSH due to the high number of patients
  - Because of the exigency, Department of Public Health and Human Services (DPHHS) is exempt from its policy to competitively procure services
  - DPHHS staff has been negotiating with adult mental health service providers in Missoula, Great Falls, Helena, Billings, and Miles City for a defined number of selected intensive community services in each community, including funding for 28 persons to remain in a Missoula group home to prevent the possibility of return to MSH if services were discontinued, and 40 new service slots
  - DPHHS has allocated up to \$500,000 of additional general fund for the new intensive services in FY 2008 and \$1.9 million general fund in FY 2009
  - The additional funds will be available because Medicaid costs are projected to be lower than the appropriation
- The nursing vacancy rates at MSH remain problematic
  - 25% for registered nurses
  - 23% for licensed practical nurses
  - DPHHS increased the pay for all RNs by \$2.50 an hour and reclassified the LPN position, increasing entry level pay by \$2.35 an hour
- 72-hour crisis services, which are expected to divert some admissions to MSH, came on line March 1 in several pilot sites and the 24 hour telepsychiatry services will be delivered from MSH with the planned hiring of four additional psychiatrists.
- When the MSH population stabilizes at 189, DPHHS may implement a new admissions policy that would limit admissions to Monday through Friday, 8 am to 5 pm

For more information, contact Lois Steinbeck at [lsteinbeck@mt.gov](mailto:lsteinbeck@mt.gov) or (406) 444-5391.

Study of Budget and Appropriations Process... The study of the budget and appropriation process involves several components and the Legislative Finance Committee took action on a few of those components at the March meeting:

- Personal services alternatives: Staff provided options and recommendations, developed by the budgeting and appropriations subcommittee, for changing the way information on personal services

budgets is presented to the Legislature. The committee concurred with the staff recommendation to augment the current process of presenting a statewide present law adjustment with a narrative that includes a standard list of questions for state agencies to answer on staffing policy decisions that affect personal services funding levels. For more information, contact Greg DeWitt at [gdewitt@mt.gov](mailto:gdewitt@mt.gov) or (406) 444-5392.

- Statutory appropriations and general fund transfers: The LFC approved the budget and appropriation subcommittee's recommendation to request that legislation be drafted to eliminate the permanent general fund transfers in 15-1-122, 17-1-511(2), and 77-1-108(4)(a), MCA, and to adopt the following policy statement about permanent money transfers:

"It is the policy of the Legislative Finance Committee that the legislature does not enact legislation that transfers general fund in an on-going manner to another account from which it can be appropriated. Such action obfuscates the true source of funding, reduces the general fund balance without any review by the appropriations subcommittees, and is inefficient. A better method is to directly appropriate the funding for the intended use. This policy also applies to non-general fund on-going transfers. Our Legislative Fiscal Division staff is instructed to inform legislators, legislative committees, and others as it deems necessary of this policy."

The LFC also approved the subcommittee's recommendation to request that legislation be drafted to eliminate the unused statutory appropriations in 10-2-603, 17-7-304, 53-6-703, 61-3-415, 75-5-1108, 75-6-214, 80-5-510, and 87-1-513, MCA; consolidate the horseracing statutory appropriations in 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304; and to eliminate the invalid statutory appropriation in 75-10-622. The committee also adopted the following policy statement about statutory appropriations:

"It is the policy of the Legislative Finance Committee that the legislature does not enact legislation establishing a statutory appropriation unless a termination date for the statutory appropriation is included."

The policy statements on money transfers and statutory appropriations will be used by LFD staff to inform committees and legislators prior to and during a legislative session when proposed legislation includes money transfers or statutory appropriations. The policy statements could also be adopted by the joint appropriations committee prior to a legislative session.

Long-Range Planning Study Work Group... Staff reported that the Long-Range Planning (LRP) Work Group met in a conference call on Feb. 15 to discuss the changes in the Treasure State Endowment Program (TSEP) in the 2009 biennium. The changes include the authorization of the entire recommended list of 56 grants, where in past biennia

the program limited the amount of grants authorized using a ranking based on a set of seven criteria. The grants would be funded with the usual endowment earnings-- which are normally used to fund the program--and funds borrowed from the Board of Investments (BOI). In addition to authorizing the entire list of grants, a deadline was included which provided that if start up conditions (six conditions described in HB 512 that include having all other project funding firmly committed) are not met by June 30, 2009, local governments will not receive their authorized TSEP grant and will need to reapply for their grants in the 2011 biennium.

To aid the discussion, TSEP and LFD staff prepared analysis on several items including an updated project status list; an estimate of the BOI loan that the TSEP program will need to fund grants authorized in the 2009 biennium; and a calculation of available funds in the 2011 biennium, cost of BOI loans, and remaining funds for projects. These materials can be found on the LFD website by following the LRP working group link.

During the conference call, the LRP working group requested that TSEP personnel write a letter to all local governments who had a grant authorized for the 2009 biennium to emphasize the importance of having a feasible financial package and updated engineering report for inclusion in their next TSEP application. TSEP personnel agreed and presented the letter to the full LFC at the March meeting, along with the updated status report on TSEP projects.

The working group also discussed drafting a recommendation to the LFC to advise the Department of Commerce to repay the BOI loan in a shorter period of time (one or two biennia) but the members decided to delay making the recommendation until later in the interim, when the amount of the BOI loan will be better defined. In the mean time, staff will analyze various loan terms and provide the results to the working group.

The members of the LRP working group will meet again later in the interim to finalize their TSEP recommendation to the LFC. Members decided to meet again, in another conference call, planned for late March or early April. At that time, members will begin examining other LRP working group interim projects, including the FWP capital project appropriation status project. The next meeting and agenda will be posted on the LFD website once it has been scheduled. For more information, contact Cathy Duncan at [cduncan@mt.gov](mailto:cduncan@mt.gov) or at (406) 444-4580.

State Fund Study... Montana State Fund/Workers' Compensation subcommittee met March 6. To enhance subcommittee members' understanding of the issues presented to the Legislative Fiscal Division report "Montana State Fund Recommendations for Legislative Finance Committee Consideration", staff presented reports on:

- workers' compensation ratemaking including the determination of loss costs;
- components of the loss cost multiplier of Montana State Fund (MSF);
- private workers' compensation insurance carriers oversight; and

- cost savings in workers' compensation for state agencies.

Materials from the presentations and recorded audio minutes of the meeting can be found at [http://leg.mt.gov/css/fiscal/MSF\\_Subcommittee.asp](http://leg.mt.gov/css/fiscal/MSF_Subcommittee.asp)

At the on June 6 meeting, the subcommittee will hear reports on:

- oversight provided to private workers' compensation insurance companies through the State Auditor's Office as compared to the oversight of the Montana State Fund provided through the Legislative Audit Committee and the Legislative Finance Committee;
- calculation of workers' compensation premiums for state agencies as compared to premiums assessed private employers in Montana;
- presentation of the 2007 Montana State Fund budget with accompanying narrative on both a cash basis and an accrual basis;
- early return to work and safety initiatives of the Montana State Fund;
- differences and effects of the loss-cost multiplier and the individual mod factors on premium rates for MSF rate payers;
- Labor Management Advisory Council findings, recommendations, and legislative proposals; and
- MSF General Counsel report on how accrual budgeting will reduce the effectiveness of the budgeting function.

For more information on the Montana State Fund/Workers' Compensation subcommittee, contact Kris Wilkinson at (406) 444-5834 or [kwilkinson@mt.gov](mailto:kwilkinson@mt.gov).

Performance Measurement...LFC's performance measurement initiative was developed to provide legislators with information on progress toward agency goals and specific initiatives funded by the 2007 Legislature. Five performance subcommittees, one for each section of the budget, meet on a regular basis to review agency progress. To date the subcommittees have received progress reports on 90 critical goals and 77 initiatives.

So far, the subcommittees have eliminated 15 goals and four initiatives from further review based on the information provided. In addition, critical issues such as the population of the state hospital, the solvency of the Petroleum Tank Compensation Fund, population management within the Department of Corrections, and cost containment in the Office of the Public Defender have been referred to the full committee for further discussions. The subcommittees are scheduled to meet on June 5. The meetings will focus on updates of the goals and initiatives

identified last December. Those updates will be available on the LFD website by May 28. For more information on the performance measurement initiative, contact Barb Smith at [basmith@mt.gov](mailto:basmith@mt.gov) or (406) 444-5347 or Kris Wilkinson at [kwilkinson@mt.gov](mailto:kwilkinson@mt.gov) or (406) 444-5834.

## CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

March meeting focuses on hospital-related issues...During its mid-March meeting, the Children, Families, Health, and Human Services Interim Committee continued work on the way health care is provided in Montana. The committee considered draft legislation involving the methods by which hospitals determine which doctors have hospital privileges and when conflicts of interest exist among health care providers.

The draft legislation is part of the SJR 15 study of Montana's health care delivery system, including the role of specialty hospitals. A subcommittee has been working since January on specialty hospitals, economic credentialing, and conflicts of interest.

The full committee also heard from stakeholders about the SJR 5 study of emergency medical services and a presentation from DMA Health Strategies, the firm hired to conduct a study of Montana's publicly funded mental health system.

Full coverage of the committee's meeting will appear in the May issue of *The Interim*.

## EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Two subcommittees of the Education and Local Government Interim Committee met on March 13, and the full ELG met on March 14. The HB 49 subcommittee will meet in May.

K-12 Subcommittee...The K-12 Subcommittee reviewed the most recent lawsuit filed by the Montana

Quality Education Coalition (MQEC), including a review of the plaintiff's position as well as the state's response.

The subcommittee also reviewed funding adjustments that neighboring states have made for their smaller, remote schools. Committee staff presented information on neighboring states (North Dakota, Oregon, South Dakota, Washington, and Wyoming) that provide extra "weight" or enhancements for smaller rural schools. Staff also discussed the financial impact of implementing some of these methods in Montana.

Staff of the Revenue and Transportation Committee summarized the SJR 31 subcommittee's work on taxation and school funding. Of particular note were the forecast of demographic trends as well as discussion of Montana's tax

base, both of which matter greatly to future school funding. The Department of Administration provided an update on the statewide school facilities inventory that is now in its second phase of implementation. Finally, Chris Lohse presented a report on the effects of concentrated poverty such as is found in many of Montana's Indian reservations on educational achievement.

Full committee meeting...Following subcommittee reports, the ELG took up the following topics:

- The committee was apprised a number of antiquated statutes pertaining to local government.
- Staff provided models of school district-level administrative efficiencies in several states, including Idaho, Wyoming, Washington, North Carolina, South Carolina, Iowa, and Florida. The administrative efficiencies or cost saving initiatives found in these states tended to fall within three general categories: consolidated jurisdictions, consolidated functions, or financial management best practices. The committee also looked at administrative facts and figures for Montana, and asked for additional data. Staff was also asked to gather more information about the states that have consolidated school jurisdictions.
- Staff provided an overview of Wyoming's Hathaway Scholarship Program. The Hathaway program is modeled on Louisiana's Taylor Plan—a scholarship program which garnered some legislator interest during the last session, and which the ELG discussed in December. Committee staff estimated the costs of the Wyoming program in Montana. Members asked staff to determine if any evaluation of measurable impacts of Louisiana's Taylor plan has been done. The PEPB Subcommittee and the Office of the Commissioner of Higher Education have undertaken a similar, but broader evaluation of this type of scholarship program. That evaluation will be presented to the ELG in June.

## FIRE SUPPRESSION COMMITTEE

Committee prepares for tour of the state...The Fire Suppression Committee and its subcommittees met on March 28 and 29 to finalize subcommittee recommendations and to develop a list of options to present to the public when the committee begins hearings around the state at the end of April.

Options the committee and subcommittees have been discussing fall into four categories: wildland-urban interface; fire suppression funding; contracting; and a catchall category that includes state-federal policies, emergency declarations, and any other items that may not fit into the other three categories. The options range from doing

nothing to adjusting current law by devising new funding strategies and land use regulations. In areas where legislation is not appropriate, the committee may opt to send letters or forward its recommendations to federal agencies and the state's congressional delegation. But members first want to hear what Montanans have to say.

FSC's plan since its first meeting has been to work during the winter to educate its members in the complexities of fire suppression; the roles of the various agencies that have fire suppression responsibilities and the differences among those agencies in fire and land management policies; how fire suppression is funded; and the challenges that development in the wildland-urban interface present. Concurrently, subcommittees have been developing the lists of options for committee action, based on information provided at meetings and ideas from members of the public who participated in a comment gathering blitz during January.

FSC's field hearing schedule follows, including known locations. Local media will be informed of times and locations prior to the meetings and additional details will be available on FSC's webpage.

**April 28-29:** Hamilton; Bitterroot River Inn conference room  
**May 16:** Lewistown  
**May 30:** Miles City; Room 106, Miles City Community College  
**June 19-20:** Seeley Lake, Libby, Thompson Falls

For more information about FSC's activities, contact Leanne Heisel at (406) 444-3593 or lheisel@mt.gov or visit the committee's webpage.

## STATE-TRIBAL RELATIONS COMMITTEE

Past, present, and future...As part of its April 19 meeting in Great Falls, the State-Tribal Relations Committee will tour the historic building at the Morony townsite in Giant Springs State Park, which the 2007 Legislature authorized under HB 284 as a possible site for use by the Little Shell Chippewa Tribe. The committee will meet at the Little Shell Chippewa Tribe's offices in the Westgate Shopping Center, 1807 3rd St. NW, in Great Falls at 10 a.m. then travel to Giant Springs State Park before returning to the Little Shell offices for a public meeting at 1 p.m.

In addition to hearing from Little Shell tribal officials, the committee will hear presentations on the Department of Corrections methamphetamine treatment programs and on a proposed intergovernmental agreement involving tribes, the state, and the federal government to reduce substance abuse. The committee also will discuss what legislation, if any, to propose to the 2009 Legislature.

For updates...The agenda is posted on the committee website or may be obtained by contacting committee staff at (406) 444-3064.



## LAW AND JUSTICE COMMITTEE

At its Feb. 28-29 meeting, the Law and Justice Interim Committee again split itself into an Adult Justice working group and a Juvenile Justice working group to consider treatment alternatives for justice-involved adults and juveniles with mental illness or substance abuse disorders.

### Adult Justice Working Group

#### Update on initiatives passed by 2007 Legislature....

The 2007 Legislature approved almost \$15 million in state funding for several initiatives to expand community-based mental health and chemical dependency services. Two of the initiatives serve mentally ill offenders in community corrections: one helps pay for medications, and the other funds certain mental health services for offenders on probation or parole or in prerelease centers. The Adult Justice Working Group received updates on the status of these initiatives and discussed where each initiative fit into the sequential intercept model, which is a conceptual framework used to discuss a series of points within the justice system where adults or juveniles with mental illness or substance abuse disorders may be intercepted and diverted to appropriate treatment.

Mental health courts...The Adult Justice working group received a presentation on the Missoula mental health court, which is the only mental health court in Montana. The court handles selected municipal, county, and district court pre-trial and post-trial cases. Initial funding for the court came from a three-year federal grant provided in 2003. Participation by a defendant or convicted offender is voluntary. To be eligible, a participant must have been diagnosed with a serious mental illness and the illness must have been a contributing factor in the person's offense. The court requires participants to comply with a treatment plan in lieu of formal charges (pre-trial) or more restrictive sentencing (post-trial).

Since January 2006, the court received 109 referrals, 74% of which involved substance abuse as well as mental illness. Thirty-three percent of the referrals were accepted. The most common reason for rejecting a referral was the seriousness of the offense. The most common cases were criminal possession of a dangerous drug. The most common mental health diagnosis was bipolar disorder.

The court reported a current caseload of 16 participants, all of whom had a co-occurring substance abuse disorder and 64% of whom had recently struggled with homelessness. The court's estimated annual budget is \$99,600, with \$47,000 in salary and benefits for a coordinator and case manager, \$40,000 for services, and \$5,000 for program evaluation and data collection. Options presented for legislative action included state funding for mental health courts, funding of a forensic PACT team (which is a Program of Assertive Community Treatment

initiative involving a multi-disciplinary team of mental health professional and community support providers), incentives for local funding, such as providing a state match, and allowing certain court fees to be increased and retained for mental health court funding.

Drug offender data...In response to a detailed information request from the committee pursuant to the SJR 24 study of diversion alternatives for drug offenders, the Department of Corrections presented a comprehensive report on drug offenders. The following are some highlights of the reported data:

- There are about 13,200 offenders in the corrections system, with more than 80% of all offenders in community placements. About 26% of the offenses committed are drug offenses, with 58% of those offenses involving only drug possession and/or use (not drug manufacture, distribution, possession with intent to sell, and fraudulently obtaining drugs). This data suggests that there are about 2,000 nonviolent offenders in the corrections system for drug possession and/or use.
- The average daily population in Department of Corrections drug or alcohol treatment programs is 971, with about 699 on waiting lists.
- The FY 2008 Department of Corrections budget for treatment programs is about \$15.3 million, with \$13.8 million of that spent for contracted services.
- About 31% of the offenders convicted of drug possession are female, and about 13% are American Indian.
- Of the sentences given to nonviolent drug offenders, 69% are deferred, 18% are suspended, 11% are sentences to the Department of Corrections for placement, and 2% are to prison.
- About 78% of the all sentences imposed for drug possession and/or use are from one to three years.
- For FY 2003 to FY 2007, of the offenders convicted for drug possession and/or use and who were sentenced to the Department of Corrections for placement, about 25.8% were placed in a chemical dependency treatment program, 25.6% were placed in a prerelease center, and 26.4 percent were placed in prison.
- Of the nonviolent drug offenders entering the corrections system in FY 2007, 23% were ordered by the court to receive treatment, 40% were ordered to undergo a chemical dependency evaluation, and 6% were ordered to receive treatment or evaluation at the discretion of the probation and parole officer.

- In FY 2007, 143 nonviolent drug offenders were placed in prison, 97 (or 67.8%) were placed in prison because of a probation or parole revocation.
- In FY 2007, the annual cost to keep one offender in the Montana State Prison was just over \$79,800, while the cost for meth treatment was about \$17,677, and the cost for alcohol treatment programs was about \$16,500. Prerelease costs are about \$12,400 for females and \$9,400 for males.

Drug policy reform initiatives in California...Tamar Todd, a staff attorney for the Drug Policy Alliance (a national organization advocating sentencing reform for drug offenders and a driving force in the passage of Proposition 36 in California in 2000) presented information on what Proposition 36 does and how it has affected California's correctional system. Under Proposition 36, sentencing laws were changed to allow certain nonviolent drug offenders to receive court-ordered treatment rather than being incarcerated, and it provided for \$120 million to fund treatment services allocated annually for five years. Proponents of Proposition 36 say studies show that about 36,000 Californians receive treatment annually, that the number of drug offenders serving time in prison has decreased by 35%, and that more than \$1.3 billion has been saved. Options for legislative action include revising Montana's sentencing laws to require court-ordered treatment and funding to enhance treatment capacity.

Drug Courts...A legislative staff report provided background on drug courts nationally as well as specific information on Montana's four adult drug courts (two district, one county, and one municipal), four family drug courts (which handle abuse and neglect cases), and four juvenile drug courts. National studies indicate that drug courts cost more than regular courts (about \$5,900 per participant, according to one study), but reduce recidivism by 15% to 20%. According to these national studies, even with the higher costs, savings and cost avoidance amount to about \$5,000 per participant. Fewer jail and probation days account for most of the cost avoidance, while treatment services account for the higher costs. However, more rigorous data collection and analysis is needed. The quality of the treatment services is a key factor in achieving any lasting reduction in recidivism.

Drug courts began to proliferate after a federal grant program was first established in the 1994 federal crime bill. All but one of Montana's drug courts were established with federal grant funding. With federal grants expiring, the 2007 Legislature appropriated about \$1.34 million to provide state funding to Montana's existing drug courts. To administer the funding, the Office of Court Administrator under the Montana Supreme Court developed a grant program, which has provided grants ranging from \$25,073 (Mineral County Youth Drug Court) to \$180,584 (Billings Adult Misdemeanor Drug Court). Options for legislative action include continued state funding and adjustments to the drug court statutes to explicitly provide for administration by the Office of Court

Administrator and for data collection and evaluation.

### **Juvenile Justice Working Group**

The Juvenile Justice working group received information and conducted roundtable discussions covering residential psychiatric treatment for juvenile offenders, early intervention and schools, and juvenile detention.

Residential psychiatric treatment...Some justice-involved youth exhibit signs of serious mental illness as well as dangerous behaviors, such as suicide attempts, self-mutilation, and verbal or physical aggression against classmates, parents, or other authority figures. Statute prohibits mentally ill juvenile offenders from being placed in a youth correctional facility. Although adults with serious mental illness who pose a danger to themselves or others may be committed to the state hospital for treatment or diverted to a crisis center (if available), there is no state-contracted or state-operated secure residential treatment facility for juvenile offenders. Consequently, the state relies on private providers of residential treatment, such as Shodair, Yellowstone Boys and Girls Ranch, and Acadia. Private providers may decline to accept very difficult or aggressive youth, or the provider may not have the capacity to accept a youth at the lower medicaid rate. As of Jan. 25, 2008, 63 justice-involved youth were in out-of-state placements: 53 were placed by youth probation, seven were placed by youth corrections from either Pine Hills or Riverside, and three were placed from parole. The youth in these placements have a variety of diagnoses and not all would require hospital-level psychiatric treatment.

Although current statute authorizes a judge to commit a youth to a mental health facility, state-dedicated beds are not available for such a commitment. In addition, the commitment determination is tied to the civil involuntary commitment statutes for adults, which includes criteria about self-sufficiency that are irrelevant for determining a youth's level of disability.

Finally, although a justice-involved youth with a mental illness may be placed by a judge in a "youth assessment center" for up to 10 days, rather than in a detention center, there are no youth assessment centers. The statute authorizes probation officers to act as "assessment officers". However, the lack of youth assessment centers, which would provide a safe and secure place for a mental health assessment, may result in a youth with a mental illness being placed in a youth detention center or sentenced to a youth correctional facility rather than receiving the appropriate treatment.

Options for legislative action include consideration of a state-contracted or state-operated residential treatment facility or center in Montana for mentally ill youth.

Early intervention, schools, and juvenile detention...Juvenile Justice working group members engaged stakeholders in roundtable discussions covering early intervention, school-based programs to handle habitual truancy, and juvenile detention alternatives. The audio files

for these discussions are available on the committee's webpage. The written minutes will be posted when they are available.

Recommendations to the full committee...The Juvenile Justice working group made the following recommendations to the full committee:

- The committee should consider requesting legislation to require that a youth be represented by an attorney at a detention hearing, unless the youth waives that right after consulting with an attorney. (Under current law, a youth may waive the youth's right to counsel without consulting an attorney.)
- The committee should consider requesting legislation to increase the time limit in which a detention hearing must be held from 24 hours (current state law) to 48 hours (federal law).
- The committee should consider legislation that deals with juvenile sex offenders in public schools, recognizing that the state must balance its obligation to provide an education to sex offenders with the need to protect students and the community.
- In-state options for secure psychiatric treatment for juvenile offenders is the priority concern of the working group and that testimony and presentations from stakeholders should be on the committee's April 10-11 agenda.
- Issues related to early intervention and school-based diversion alternatives should be referred to other appropriate interim committees, such as the Children, Families, Health and Human Services Interim Committee and the Education and Local Government Interim Committee.

Next meeting... The full committee will meet on April 10-11 in Room 137 of the Capitol (the working groups have been dissolved). The following topics will be on the agenda:

- in-state residential psychiatric treatment for youth;
- the HJR 50 survey results on the adult involuntary commitment process and costs;
- Kendra's Law (court-ordered commitment for supervised community mental health services);
- jail and prison standards for treatment of mentally ill offenders, including suicide prevention;
- salary increases for district court judges;
- medical costs accruing to hospitals for treating county inmates or detainees when the county either does not formally arrest the person or temporarily

releases the person from county custody;

- suggested housekeeping legislation and discussion of the committee's sense of direction with respect to drug courts, mental health courts, youth detention, and referral of issues to other interim committees.

For more information, contact Sheri Heffelfinger, committee staff, at (406) 444-3596, or visit the committee's webpage.

## REVENUE AND TRANSPORTATION COMMITTEE

April meetings...The Revenue and Transportation Interim Committee is meeting Thursday and Friday, April 17-18, with the SJR 31 subcommittee and the HB 488 subcommittee meeting Thursday morning.

Agency reports, draft legislation, and gross receipts taxes to occupy committee...The full committee will meet in Room 102 of the Capitol at 3 p.m. on Thursday and at 8 a.m. on Friday. Thursday afternoon, Jim Lynch, director of the Department of Transportation, will report on traffic safety, Highway 2, and the state highway special revenue account. Dan Bucks, director of the Department of Revenue, will join Lynch on traffic safety involving young drivers.

On Friday, Terry Johnson, Legislative Fiscal Division, will present a general fund collection report, and Carroll South, Board of Investments, will give an update on the state's short-term investment pool. Jeff Martin, committee staff, will discuss gross receipts taxes recently enacted in Michigan and Ohio. The committee will consider two bill drafts to provide a fixed-date conformity with federal income tax law. Some other agenda items include a discussion of the Department of Revenue's realty transfer certificate project, Department of Revenue reports, and committee consideration of requesting bill drafts to clarify the annual exemption amount from the metalliferous mines tax and to clarify definitions and internal references related to the various types of tax increment districts.

SJR 31 subcommittee...The SJR 31 subcommittee studying taxation and school funding will meet on Thursday at 8:30 a.m. in Room 102 of the Capitol. Some agenda items include revenue reports that were presented to the Quality Schools Interim Committee in 2005, a summary of the QSIC's findings and recommendations, and a report from Lance Melton, Montana School Boards Association, on adequate school funding. The committee will also discuss sales tax options using the Department of Revenue's sales tax model.

HB 488 subcommittee...The HB 488 subcommittee studying periodic property reappraisal will meet Thursday at 8:30 a.m. in Room 137 of the Capitol. Scott Rickard, Center

for Applied Economic Research at MSU-Billings, will discuss housing markets in Montana and surrounding states, and Doug Young, MSU-Bozeman, will talk about recent property tax trends in Montana. Committee staff will report on property reappraisal and property tax relief in other states. Some other topics include an update of the reappraisal cycle, participation in property tax relief programs in Montana, and expanding an existing property tax credit.

Want to be in the loop?...The agendas and other material for the April meetings will be posted on the committee's webpage. For more information about the committee, contact Jeff Martin, committee staff, at (406) 444-3595 or [jmartin@mt.gov](mailto:jmartin@mt.gov).

## THE BACK PAGE

### FLORIDA, MICHIGAN MAIL BALLOT SOUNDS FAMILIAR THEME

By Sue O'Connell  
Legislative Research Analyst

When talk arose last month about holding mail-ballot elections as a "do-over" solution for Democratic presidential primaries in Florida and Michigan, many of the discussion points were familiar to a small group of Montanans.

Since last summer, members of the State Administration and Veterans' Affairs Interim Committee and a work group have been studying the pros and cons of expanding the use of mail-ballot elections in Montana.

None of them could have foreseen that the issues raised in numerous meetings in Helena would receive a national airing as part of the presidential campaign.

That's because mail-ballot elections are still a rarity in the United States. Many states don't use them at all, and those that do generally allow their use only for smaller elections, such as those for city offices or special purpose districts.

Only Oregon holds all its elections by mail, although Washington is quickly catching up after changing its election laws in 2005.

So for much of the country, the possibility of mail-ballot elections has posed some significant questions.

### THE FLORIDA AND MICHIGAN DILEMMA

With the Democratic presidential race still undecided by mid-March, party leaders began looking for a solution to a problem that surfaced when the Michigan and Florida Democratic parties decided to flout Democratic National Committee (DNC) rules and hold their primary elections before Feb. 5. The rules allowed only four states to hold their primary contests before the Super Tuesday vote in February. Michigan and Florida were not among those states.

The penalty? The DNC said the Florida and Michigan delegates could not be seated at this summer's national convention and thus would not have a say in choosing the party's presidential nominee.

When the Democratic race turned into a prolonged post-Super Tuesday contest with no clear end in sight, the potential consequences of the penalty began to sink in. And while the DNC allows an appeals process at the convention itself, some pundits speculated that the process could end in a stalemate if the nominee was still unknown at that time.

Thus talk turned in mid-March to whether the two states should be allowed to re-do their primary elections--possibly

through mail-ballot elections.

Those floating the idea mentioned the ease of voting by mail and the fact that a mail ballot could reach every voter, whether living overseas or in a nursing home.<sup>1</sup>

But some officials cautioned that the process was untested in those states, that these primaries were too important to begin a vote-by-mail experiment now, and that the possibility of fraud or vote-influencing could taint the results.<sup>2</sup>

To those Montanans who have been working on whether and how mail-ballot elections might be expanded here, the arguments on both sides were familiar.

### BACK AT THE MONTANA CAPITOL . . .

The 2007 Legislature approved House Joint Resolution 46, which created a two-pronged study that was assigned to the State Administration and Veterans' Affairs Interim Committee (SAVA). The resolution called for legislation to clean up and clarify existing election laws and also for a study of whether mail-ballot elections might be expanded.

Toward that end, a group of people representing state and local election officials, political parties, and groups interested in the elections process met five times from August through December 2007. The question of whether to allow greater use of mail ballots was a key focus of the meetings.

The impetus for expanded mail-ballot elections came in part from the fact that an increasing number of Montanans are taking advantage of changes made to state law in 1999 and in 2005, first allowing no-excuse absentee voting and then allowing people to vote by absentee ballot on a permanent basis.

Figures from the Montana Secretary of State's Office show that 15.5% of Montanans voted absentee in 2000, the first year after no-excuse absentee voting went into effect. By 2004, absentee ballots made up 22% of the votes cast. And by 2006, when permanent absentee voting was allowed, 29.5% of all Montanans who voted did so by mail, using absentee ballots. Forty-five of the 56 counties had absentee voting rates of 20% or higher; in nine counties, one-third or more of the votes were absentee.

While permanent absentee voters receive their ballots by mail for an election, other voters are still going to the polls on election day.

But in a mail-ballot election, ballots are mailed to all voters,

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<sup>1</sup> Mike Dorning, "Democrats weigh do-overs in Florida, Michigan," *Chicago Tribune*, March 10, 2008.

<sup>2</sup> Richard Simon, "Democrats kick around mail revote for Florida, Michigan," *Los Angeles Times*, March 10, 2008, and Sudeep Reddy, "Mail-In Revotes Gain Momentum," *The Wall Street Journal*, March 10, 2008.

and polling places essentially close up shop. Ballots are returned either by mail or in person to a limited number of locations designated by the county election administrator.

In Montana, mail-ballot elections have been allowed since 1985 but only for certain, smaller elections. They may not be used for any regular federal, state, or county election or for any election that is held on the same day that another election in that same location is taking place at the polls.

### LOOKING FOR EXAMPLES ELSEWHERE

Because widespread experience in mail balloting is lacking, the HJR 46 study sought more information to help lawmakers decide whether the vote-by-mail option here should be expanded.

Oregon led the way in the vote-by-mail movement a decade ago, through a voter initiative approved in 1998 that requires mail balloting for all elections – including federal elections for president and members of Congress. But other states have been slow to follow that lead.

Two states have since considered, but rejected, initiatives similar to Oregon's: Colorado in 2002 and Arizona in 2006. Many state legislatures have considered changes to mail-ballot election law, but their use is still largely limited. Washington is one of the few exceptions; in 2005, the Washington Legislature gave county election officials the choice of determining whether to hold all elections by mail.

Once approved, change came swiftly there. Twenty-nine of Washington's 39 counties made the switch that year, while another four went to mail ballots in 2006. King County--the state's most populous county, encompassing Seattle--decided in June 2006 to convert to mail-ballot elections by this year.

Montana's HJR 46 work group looked at Oregon's and Washington's experiences and at national studies, as members deliberated whether to make a recommendation to SAVA. Their discussions focused on not only the pros and cons cited by advocates and opponents, but also on voting statistics in Oregon and the recent experiences of some major Montana cities that conducted their city elections by mail last fall.

### THE GOOD, THE BAD, AND THE UNKNOWN

Mail-ballot advocates nationally and in Montana point to several factors that they believe make mail balloting a cost-effective and efficient way to conduct elections, including:

- Ease of voting, particularly for some voters who are elderly, have child care needs, or have disabilities, because people vote in their homes at their own convenience, with time to examine complicated ballot issues.
- Increase in voter turnout, because the ballots come

to the voters.

- A reduced need for poll workers, who are becoming more difficult to recruit because of the time commitment involved.
- Fewer errors in handling of ballots than may occur when hundreds of election judges are working in different precincts across the state and may be resolving Election Day questions in different ways if they don't contact the county election administrator for direction.
- A possible reduction in expenses, because many of the cost-intensive factors of polling places would no longer exist, such as paying election judges and buying and maintaining voting equipment for each polling place.

Opponents of the idea generally point to these concerns:

- An increased possibility of fraud, because the process may allow opportunity for interception of the ballots while they are being delivered to the voter or returned to the elections office – a time when the election administrator or election judges are not available to monitor the handling of the ballots.
- Possible undue influence, if family members, employers, or interest groups pressure someone to vote a certain way when no safeguards are in place to ensure that people can cast their votes in private.
- Possible loss of the secrecy of the ballot, because a person's name is clearly visible on the return envelope.
- Possible disenfranchisement of people who change their addresses often or share living quarters, because ballots may not reach them, or of people whose voter registration has lapsed, because they will no longer be able to reactivate the registration at a precinct polling place on Election Day.
- The uncertainty of whether costs savings will result, because the savings could be offset by additional costs for administering the elections.

### WHO'S REALLY VOTING IN OREGON?

Some work group members also questioned whether Oregon's voting statistics tell the whole story of how vote-by-mail has affected elections there. Turnout of registered voters has increased with mail-ballot elections, with the increase most notable in presidential-election years. And a comparison of turnout by registered voters in Oregon and Montana shows that while turnout was fairly similar for the 1996 presidential election, held in both states at polling places, a significant gap opened up after Oregon converted to mail-ballot elections.

In 1996, turnout was 71.3% in Oregon and 70.6% in Montana. In the next presidential election, turnout in Oregon went to 79.8% with mail-ballot elections, while Montana's turnout was 59.9%. In 2004, 86.5% of Oregon's registered voters returned their ballots, while 63.3% of Montana's registered voters cast a ballot.

However, many of the HJR 46 work group members felt it was also important to look at whether changes had occurred in the percentage of the voting-age population that was registering for and voting in elections. They were concerned that mail ballots in Oregon might be reaching only consistent voters and voters who don't move frequently, while some eligible voters may fall through the cracks if their registration lapses or they move, and they don't receive a ballot.

That analysis showed that in Oregon, the percentage of the voting-eligible population that is registered to vote has decreased, from a pre-initiative level of 87% in 1998 to a low of 72.5% in 2006. However, the percentage of the registered voting-eligible population was above 80% in the presidential-election years of 2000 and 2004.

Turnout in Oregon among the voting-eligible population is significantly lower than the overall turnout of registered voters, although it has been higher in the presidential years of 2000 and 2004--with mail-ballot elections--than it was in 1996, without them. Turnout among this group was about the same in non-presidential years, regardless of the way in which the election was held.

In Montana, turnout of the voting-eligible population was higher in the two election cycles before Oregon's voting procedures changed. Starting in 2000, it was lower--until the 2006 election, when a hotly contested U.S. Senate race topped the state ballot.

However, in Montana, a higher percentage of the voting-eligible population is registered to vote, and less of a gap exists between the turnout of the voting-eligible population and that of all registered voters. That gap has been about 6% to 7% over the past decade, compared to Oregon's gap of 7.6% in 1998 (before mail ballot elections), 16% in 2004, and 19.5% in 2006.

### **MUNICIPALITIES TURN TO MAIL BALLOTS**

More than 80 local elections were held by mail in November 2007, with four of the state's largest cities--Billings, Bozeman, Helena, and Missoula--conducting their city elections by mail for the first time. Turnout in all four cities far exceeded past municipal elections.

Yet those cities experienced some problems as well. In Missoula and Bozeman, a relatively large number of ballots were returned as undeliverable--9.6% and 14.3%, respectively. Elections officials believed the large number of college students in those cities factored into the returns, because many students change residences at the end of the academic year and forget to -- or don't know that they should -- update their addresses with the elections office.

In Helena, ballots for the Helena Citizens Council included only the candidates running in a voter's precinct rather than the multi-precinct slate of candidates that should have been listed. The city had to hold a separate mail-ballot election later for those offices.

In Missoula, 178 voters living in one city council ward received ballots for candidates in a different ward, apparently because of an error that occurred while ballots were being placed in envelopes by the elections staff. New ballots were mailed to those residents well before the election, while the old ballots were voided in the county's computer system.

### **LOOKING AT FUTURE ELECTIONS**

The HJR 46 work group did not reach consensus on whether the use of mail-ballot elections should be expanded. So SAVA members are considering a pilot project that would test the use of mail-ballot elections for all types of elections in a limited number of counties, during the 2009 and 2010 elections.

The pilot project would encompass approximately a dozen rural, urban, and tribal counties from all areas of the state and would require the collection of information that both SAVA and the work group believed would help lawmakers evaluate whether increased mail balloting makes sense for Montana, including information on:

- voter registration and voter turnout, to see if significant changes occur in any particular areas of the state or among particular demographic groups;
- mail delivery problems that arise as ballots are mailed to and returned by voters;
- the number of locations counties designate for the return of ballots and the number of voters returning their ballots by various methods; and
- the costs of operating elections by mail.

SAVA will review and act on a bill draft later this interim. If the legislation goes forward, the results of a pilot project could well determine whether Montana voters in the future will be marking their ballots at their kitchen tables or in a voting booth at a precinct polling place.



# INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
April 2008						
		1 Legislative Council, 8 a.m., Room 102	2	3	4	5
6	7	8	9	10 Law and Justice Committee, Room 137	11 Law and Justice Committee, Room 137	12
13	14	15	16	17 Revenue and Transportation subcommittees: SJR 31 sub- committee, Rm. 102  HB 488 sub- committee, Rm.137  Full RTIC, 3 p.m., Room 102	18 Revenue and Transportation Committee, Room 102	19 State-Tribal Relations Committee, Great Falls
20	21	22	23	24	25	26
27	28 State Administration and Veterans' Affairs Committee (SAVA)  Fire Suppression Committee (FSC), Bitterroot River Inn conference room, Hamilton MT	29 SAVA  Water Policy Committee, Room 172  FSC, Bitterroot River Inn conference room, Hamilton MT	30 Water Policy Committee, Room 172			



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
May 2008						
				1 Energy and Telecommunications Committee, Room 172	2 Energy and Telecommunications Committee, Room 172	3
4	5	6	7 Economic Affairs Committee	8 Economic Affairs Committee	9	10
11	12 Environmental Quality Council, Room 102	13 Environmental Quality Council, Room 102	14	15	16 Fire Suppression Committee, Lewiston, MT	17
18	19	20	21	22	23	24
25	26	27	28	29	30 Fire Suppression Committee, Miles City Community College, Room 106, Miles City, MT	31





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